

FILED

OCT 14 2008

CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 BY *DMB*
 DEPUTY

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 6 Attorneys for the Plaintiff

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 Paul H. Jones

12 Plaintiff,

13 v.

14 Prestige Financial Services, Inc.

15 Defendant.

16 Case Number: *08 CV 1908 L POR*

17 **Complaint For Damages**

18 **Jury Trial Demanded**

19
 20
INTRODUCTION

21 1. The California legislature has determined that the banking and credit system
 22 and grantors of credit to consumers are dependent upon the collection of just
 23 and owing debts and that unfair or deceptive collection practices undermine
 24 the public confidence that is essential to the continued functioning of the
 25 banking and credit system and sound extensions of credit to consumers. The
 26 Legislature has further determined that there is a need to ensure that debt
 27 collectors exercise this responsibility with fairness, honesty and due regard
 28

HYDE & SWIGART
 San Diego, California

ORIGINAL

1 for the debtor's rights and that debt collectors must be prohibited from
2 engaging in unfair or deceptive acts or practices.

3 2. Paul H. Jones, (Plaintiff), through Plaintiff's attorneys, brings this action to
4 challenge the actions of Prestige Financial Services, Inc., ("Defendant"), with
5 regard to attempts by Defendant to unlawfully and abusively collect a debt
6 allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

7 3. Plaintiff makes these allegations on information and belief, with the exception
8 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
9 Plaintiff alleges on personal knowledge.

10 4. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
11 were knowing and intentional, and that Defendant did not maintain
12 procedures reasonably adapted to avoid any such violation.

13 **JURISDICTION AND VENUE**

14 5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1332, and 28 U.S.C. §
15 1367 for supplemental state claims.

16 6. This action arises out of Defendant's violations of the Rosenthal Fair Debt
17 Collection Practices Act, California Civil Code §§ 1788-1788.32
18 ("RFDCPA").

19 7. Because Defendant does business within the State of California, personal
20 jurisdiction is established.

21 8. Venue is proper pursuant to 28 U.S.C. § 1391(c).

22 **PARTIES**

23 9. Plaintiff is a natural person who resides in the City of San Diego, County of
24 San Diego, State of California.

25 10. Plaintiff is, and all times relevant to this matter was, an active duty member of
26 the United States Marine Corp.

27 11. Defendant is from the City of Salt Lake City, the County of Salt Lake, and the
28 State of Utah.

12. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).
13. Defendant, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), is therefore a debt collector as that term is defined by California Civil Code § 1788.2(c).
14. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a consumer debt and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

15. At all times relevant to this matter, Plaintiff was an individual residing within the State of California.
16. At all times relevant, Defendant conducted business within the State of California.
17. Sometime before June-September, 2008, Plaintiff is alleged to have incurred certain financial obligations.
18. These alleged obligations were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and are therefore a “debt” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f).
19. Sometime thereafter, but before June-September, 2008, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to the validity of this alleged debt.

1 20. Subsequently, but before June-September, 2008, the alleged debt was
2 assigned, placed, or otherwise transferred, to Defendant for collection.

3 21. On or about June-September, 2008, Defendant contacted Plaintiff's relatives
4 by telephone and discussed Plaintiff's alleged debt with these relatives.

5 22. Except as provided in 15 U.S.C. § 1692b, and without the prior consent of the
6 consumer given directly to the Defendant, and without the express permission
7 of a court of competent jurisdiction, and for a purpose not reasonably
8 necessary to effectuate a postjudgment judicial remedy, Defendant
9 communicated, in connection with the collection of a debt, with any person
10 other than the consumer, his attorney, a consumer reporting agency, the
11 creditor, the attorney of the creditor, or the attorney of Defendant.
12 Consequently, Defendant violated 15 U.S.C. § 1692b(b), as well as Cal. Civ.
13 Code § 1788.17.

14 23. Subsequently, Defendant made numerous telephone calls to Plaintiff's
15 employer and Plaintiff's supervisors and discussed Plaintiff's alleged debt with
16 these persons.

17 24. Without the prior consent of the consumer given directly to the Defendant or
18 the express permission of a court of competent jurisdiction, Defendant
19 communicated with a consumer in connection with the collection of a debt at
20 an unusual time or place or a time or place known or which should be known
21 to be inconvenient to the consumer. Consequently, Defendant violated 15
22 U.S.C. § 1692c(a)(1), as well as Cal. Civ. Code § 1788.17.

23 25. Without the prior consent of the consumer given directly to the Defendant or
24 the express permission of a court of competent jurisdiction, Defendant
25 communicated with a consumer in connection with the collection of a debt at
26 the consumer's place of employment when Defendant knew or had reason to
27 know that the consumer's employer prohibited the consumer from receiving
28

such communication. Consequently, Defendant violated 15 U.S.C. § 1692c(a)(2), as well as Cal. Civ. Code § 1788.17.

26. Except as provided in 15 U.S.C. § 1692b, and without the prior consent of the consumer given directly to the Defendant, and without the express permission of a court of competent jurisdiction, and for a purpose not reasonably necessary to effectuate a postjudgment judicial remedy, Defendant communicated, in connection with the collection of a debt, with any person other than the consumer, his attorney, a consumer reporting agency, the creditor, the attorney of the creditor, or the attorney of Defendant. Consequently, Defendant violated 15 U.S.C. § 1692b(b), as well as Cal. Civ. Code § 1788.17.

27. Subsequently, Plaintiff was criticized by his supervisors due to the highly personal information disclosed by Defendant.

28. This illegal conduct by Defendant will have a negative impact on his ability to be promoted, her requisite security clearance, and her ability to be employed.

29. This illegal activity by Defendant has caused Plaintiff damages, including stress, embarrassment, sleeplessness, and other emotional and stress related injury.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

30. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

31. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

32. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a) in excess of

1 \$75,000; statutory damages for a knowing or willful violation in the amount
2 up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable
3 attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from
4 Defendant.

PRAYER FOR RELIEF

6 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant, and
7 Plaintiff be awarded damages from Defendant, as follows:

COUNT I

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

CAL. CIV. CODE §§ 1788-1788.32

33. An award of actual damages pursuant to California Civil Code § 1788.30(a);
34. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
35. An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

36. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: 10/10/08

Hyde & Swigart

By:

Joshua B. Swigart

Attorneys for the Plaintiff

SJS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Paul H. Jones

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF	<input type="checkbox"/> 4 Incorporated or Principal Place of Business In Another State
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6	

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 861 HIA (1305ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	FEDERAL TAX SUITS	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		Habeas Corpus:	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 891 Agricultural Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 555 Prison Condition	IMMIGRATION	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Habens Corpus - Alien Detainee	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC § 1332Brief description of cause:
Fair Debt Collection

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
 YES NO
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/9/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 156184AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE

ORIGINAL

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

156184 - BH

October 16, 2008
16:01:48

Civ Fil Non-Pris
USAO #: 08CV1908 CIVIL FILING
Judge.: M. JAMES LORENZ
Amount.: \$350.00 CK
Check#: BC#2618

Total-> \$350.00

FROM: JONES V. PRESTIGE FINC'L SVCS.
CIVIL FILING